

FREQUENTLY ASKED QUESTIONS

These frequently asked questions and the corresponding answers (Q&As) are derived from telephone inquiries from members of the financial community. They are intended to further the continuing dialogue between the IRS and the financial community about issues arising under the QI program. They provide a convenient alternative to a direct telephone inquiry for members of the financial community wishing to enhance their understanding of these issues. The IRS continues to encourage direct inquiries. Because these Q&As are equivalent to telephone advice they do not amend or modify the Income Tax Regulations, the QI Agreement or other legal authority.

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I. BECOMING A QI.

QUESTION 1: What is a “Qualified Intermediary”?

ANSWER 1: A “Qualified Intermediary” (QI) is an eligible person that enters into a QI Agreement with the IRS pursuant to Rev. Proc. 2000-12, 2000-4 I.R.B. 387, and that acts as a QI under such Agreement. Generally, under the QI Agreement, the QI agrees to assume certain documentation and withholding responsibilities in exchange for simplified information reporting for its foreign account holders and the ability not to disclose proprietary account holder information to a withholding agent that may be a competitor.

QUESTION 2: What kinds of entities are eligible to enter into a QI Agreement?

ANSWER 2: The following entities may enter into a QI Agreement:

- (1) A foreign financial institution or foreign clearing organization (other than a U.S. branch or office),

- (2) A foreign branch or office of a U.S. financial institution or clearing organization,
- (3) A foreign corporation, but only for the purpose of claiming treaty benefits for its shareholders, or
- (4) Any other entity acceptable to the IRS, determined on a case-by-case basis.

QUESTION 3: How does an entity become a QI?

ANSWER 3: To apply for QI status, an eligible entity must submit an application in accordance with section 3 of Rev. Proc. 2000-12.

QUESTION 4: When can a QI applicant begin to act as a QI?

ANSWER 4: A QI applicant may act as a QI as soon as it receives its QI-EIN.

QUESTION 5: What is a QI-EIN?

ANSWER 5: A QI-EIN is a special Employer Identification Number assigned by the IRS to a QI. The QI-EIN must be used on every Form W-8IMY provided by the QI to the withholding agent from which it receives payments as a QI, and must be used on Forms 1042, 1042-S, 1042-T, 1099, 945, and 1096 filed with the IRS as a QI. A QI-EIN may be used only when the QI is acting in its capacity as a QI. Therefore, a QI may need an additional Employer Identification Number when it is acting in a non-QI capacity.

QUESTION 6: How does a QI applicant obtain a QI-EIN?

ANSWER 6: A QI applicant must include in its application a Form SS-4 requesting a QI-EIN. After the IRS receives the application, it will issue a QI-EIN to the applicant.

QUESTION 7: What can an applicant do to expedite its application for a QI Agreement?

ANSWER 7: Rev. Proc. 2000-12, 2000-4 I.R.B. 387, outlines the process of applying for and executing a QI Agreement, and provides the text of the QI Agreement. To expedite the application and execution of its QI Agreement, an applicant should send its application to the following address:

Internal Revenue Service
LMSB:FS:QI
290 Broadway- 12th Floor
New York, NY 10007-1867
USA

Please note that this address differs from the address given in section 3.01 of Rev. Proc. 2000-12.

The application must contain all of the information required in section 3.02 (1) through (9) of Rev. Proc. 2000-12. An applicant need not submit the 18 items of information on a jurisdiction's know-your-customer rules required in section 3.02 if that jurisdiction is listed on the IRS website (www.irs.gov) and search IRS website for "QI" as a jurisdiction whose KYC rules have been approved or have been submitted for approval. The applicant should complete Form SS-4 (rev. 12-2001), "Application for Employer Identification Number," Lines 1, 4a, 4b, 6, 7, 8a (check "other" and insert "Qualified Intermediary"), 8b, 9 (check box "compliance with IRS withholding regulations") and 10 (insert the date that the QI proposes to begin operating as a QI). The applicant need not complete Lines 2, 3, 5a, 5b, or 11 through 17c.

The applicant should also submit with its application two signed copies of the QI Agreement, as requested in section 4 of Rev. Proc. 2000-12, with the following modifications:

1) A new section 12.08 must be added to the **Miscellaneous Provisions** to read as follows:

Sec. 12.08. This Agreement hereby incorporates all of the provisions of the QI Agreement published in Rev. Proc. 2000-12, 2000-4 IRB 387 with the following exceptions:

(A) Section 2.44(B)(4) of the QI Agreement, which defines the term “reportable amount” for a non-U.S. payor, is amended to read as follows:

Any foreign source interest, dividends, rents, royalties, or other fixed or determinable income if such income is paid in the United States or to an account maintained in the United States or any other amount known to be paid to a U.S. non-exempt recipient paid inside the United States or presumed paid to a U.S. non-exempt recipient under section 5.13(C)(4) of this Agreement (unless an exception to reporting applies under chapter 61 of the Code).

(B) The IRS address in section 12.06 of the QI Agreement is amended as follows:

Internal Revenue Service
LMSB:FS:QI
290 Broadway- 12th Floor
New York, NY 10007-1867
USA

(C) The following NOTE, which precedes section 3.07 of the Agreement, is deleted:

[NOTE: A qualified intermediary that is not a U.S. payor must obtain IRS approval to assume primary Form 1099 reporting and backup withholding responsibility with respect to reportable amounts. The IRS will evidence its approval of a non-U.S. payor’s assumption of primary Form 1099 reporting and backup withholding responsibility by the signature of the Commissioner, or his delegate, in the margin of section 3.07 of this Agreement.]

Any other variances from the text of the QI Agreement, published in Rev. Proc. 2000-12 are not part of this Agreement, and therefore void, unless they are amendments made after the date this Agreement is executed, pursuant to section 12.02 of this Agreement.

2) Section 2.44(B)(4) of the QI Agreement as published in Rev. Proc. 2000-12, which defines the term “reportable amount” for a non-U.S. payor, must be replaced with the following amended section 2.44(B)(4):

Sec. 2.44. Reportable Payment.

* * * * *

(B) Non-U.S. Payor.

* * * * *

(4) Any foreign source interest, dividends, rents, royalties, or other fixed or determinable income if such income is paid in the United States or to an account maintained in the United States or any other amount known to be paid to a U.S. non-exempt recipient paid inside the United States or presumed paid to a U.S. non-exempt recipient under section 5.13(C)(4) of this Agreement (unless an exception to reporting applies under chapter 61 of the Code).

3) The IRS address in section 12.06 of the QI Agreement as published in Rev. Proc. 2000-12, must be replaced with the following IRS address:

Internal Revenue Service
LMSB:FS:QI
290 Broadway- 12th Floor
New York, NY 10007-1867
USA

4) The following NOTE, which precedes section 3.07 of the QI Agreement as published in Rev. Proc. 2000-12, must be deleted:

[NOTE: A qualified intermediary that is not a U.S. payor must obtain IRS approval to assume primary Form 1099 reporting and backup withholding responsibility with respect to reportable amounts. The IRS will evidence its approval of a non-U.S. payor’s assumption of primary Form 1099 reporting and backup withholding responsibility by the signature of the Commissioner, or his delegate, in the

margin of section 3.07 of this Agreement.]

QUESTION 8: Is a QI required to act as a QI?

ANSWER 8: The execution of a QI Agreement with the IRS authorizes the QI to act as a QI but does not obligate it to do so. Whether or not the QI chooses to act as a QI, it must file an annual tax return on Form 1042 using its QI-EIN. If the QI has not acted in its capacity as a QI for a taxable year, it should file a return for that year on Form 1042, and write in zeros where appropriate.

II. PAYMENTS COVERED BY THE QI AGREEMENT.

QUESTION 1: What payments are covered by the QI Agreement?

ANSWER 1: Payments that:

- (1) Are received by the QI in a QI-designated account, and
- (2) Are either reportable amounts or reportable payments.

QUESTION 2: What are reportable amounts?

ANSWER 2: Reportable amounts generally consist of U.S. source dividends, interest, rents, royalties and other fixed or determinable income. Reportable amounts do not include:

- (1) Interest on deposits with banks or other financial institutions that remain on deposit for two weeks or less, or
- (2) Original issue discount arising from a sale and repurchase transaction completed within a period of two weeks or less. Accrued unpaid amounts (such as original issue discount) are not reportable amounts.

QUESTION 3: What are reportable payments?

ANSWER 3: The definition of a reportable payment differs depending

upon whether the QI is a U.S. payor or a non-U.S. payor.

For a U.S. payor, a reportable payment generally consists of income from all securities (U.S. and non-U.S.) and proceeds from sales of any securities (subject to exceptions for certain securities such as bonds issued outside the U.S. by U.S. issuers in bearer form).

For a non-U.S. payor, a reportable payment generally means:

- (1) Any reportable amount;
- (2) Proceeds from the sale of securities that are beneficially owned by a U.S. non-exempt recipient if the sale is effected inside the U.S.;
- (3) Proceeds for the sale of securities that are beneficially owned by a U.S. non-exempt recipient whose identity is prohibited by law (including by contract) from disclosure, regardless of where the sale is effected; and
- (4) Any foreign source dividends or interest, or any other amount (including proceeds from the sale of securities) paid in the U.S., or to an account maintained in the U.S., to a person that is known or presumed to be a U.S. non-exempt recipient.

QUESTION 4: If the QI designates an account as a QI account, does the QI Agreement apply to non-U.S. securities that are also held in the designated account?

ANSWER 4: Yes, the QI Agreement applies to non-U.S. securities that are held in an account that the QI has designated as a QI account. If any of these securities is held by a U.S. non-exempt recipient, the QI must obtain a Form W-9 and must arrange for any reportable payments related to these securities to be reported to the IRS on Form 1099.

III. KNOW-YOUR-CUSTOMER RULES.

QUESTION 1: Where can a QI operate as a QI?

ANSWER 1: A QI can operate as a QI in any jurisdiction whose know-your-customer (KYC) rules have been approved by the IRS.

Because the IRS regards KYC rules as a vital component of the QI system, the IRS will not extend the QI system to any jurisdiction that does not have KYC rules or has unacceptable KYC rules. The IRS will not allow a QI to operate as a QI in a jurisdiction that does not have KYC rules or that has unacceptable KYC rules.

QUESTION 2: How does a QI know whether the IRS has approved the KYC rules in a jurisdiction or whether the IRS has determined that a jurisdiction has no KYC rules or has unacceptable KYC rules?

ANSWER 2: The IRS maintains a list of jurisdictions whose KYC rules have been approved on the IRS website (www.irs.gov <<http://www.irs.gov>> and search IRS website for "QI"). This IRS website also lists jurisdictions whose KYC rules have been submitted for approval. However, the IRS cannot process a QI application until the KYC rules for a jurisdiction have been listed as approved and a standardized attachment to the QI Agreement for that jurisdiction, listing acceptable types of KYC documentary evidence (Attachment), has been posted on the IRS website. To date, no jurisdictions have been listed as having no KYC rules or as having unacceptable KYC rules. If the IRS determines that a jurisdiction has no KYC rules or has unacceptable KYC rules, then the IRS will list those jurisdictions on the IRS website.

QUESTION 3: Can a branch operating in a KYC approved jurisdiction act as a QI if it is a branch of an entity that is not organized in a KYC approved jurisdiction?

ANSWER 3: Yes, a branch operating in a KYC approved jurisdiction may act as a QI even if it is a branch of an entity that is not organized in a KYC approved jurisdiction. In that case, the branch is subject to the KYC rules of the country in which it is operating. Because the branch and the entity are the same legal person, the entity would enter into the QI Agreement, which would authorize it to act as a QI only with respect to the branch. This rule does not apply to groups of affiliated corporations. Each affiliate is a separate legal person that must enter into its own QI Agreement before it can operate as a QI in a KYC approved jurisdiction.

QUESTION 4: Can a QI act as a QI for branches operating in jurisdictions whose KYC rules have not yet been approved by the IRS or in jurisdictions that have no, or unacceptable, KYC rules?

ANSWER 4: A QI may not act as a QI for branches operating in jurisdictions whose KYC rules have not been submitted to the IRS.

A QI may act as a QI for branches operating in jurisdictions that are identified on the IRS website as either jurisdictions that are awaiting approval of KYC rules or jurisdictions that have no, or unacceptable, KYC rules provided that the QI is organized in a jurisdiction whose KYC rules are identified on the IRS website as approved and the QI agrees to apply its home country KYC rules in the operations of the branch. If the IRS subsequently approves the KYC rules of the jurisdiction in which the branch is located, the branch must apply those rules beginning on the date that an Attachment to the QI Agreement for such jurisdiction is posted on the IRS website.

QUESTION 5: Do the rules applicable to branches described in Q&A 4 also apply to affiliates of a QI?

ANSWER 5: The rules described in Q&A 4 apply only to branches. Because an affiliate is a separate legal person, an affiliate may not act as a QI in any jurisdiction unless it enters into a QI Agreement with the IRS and becomes a QI in its own right.

IV. DOCUMENTATION.

QUESTION 1: Must a QI obtain documentation from all of its account holders?

ANSWER 1: No. The QI Agreement requires the QI only to obtain documentation from any account holders to which the QI pays reportable amounts or reportable payments from a designated QI account.

QUESTION 2: What is a designated QI account?

ANSWER 2: A designated QI account is an account with a withholding agent that the QI has designated as an account for which it acts as a QI.

QUESTION 3: What efforts must a QI undertake to obtain documentation from account holders?

ANSWER 3: The QI Agreement provides that a QI must use its best efforts to obtain documentation from account holders.

QUESTION 4: What happens if documentation cannot be obtained despite best efforts?

ANSWER 4: The QI Agreement provides that an event of default has occurred if documentation is lacking, incorrect, or unreliable for a significant number of direct account holders.

QUESTION 5: What documentation must a QI obtain from its account holders?

ANSWER 5: The QI Agreement requires that, for a foreign account holder, a QI must obtain a Form W-8 or documentary evidence and, for a U.S. account holder, a QI must obtain a Form W-9 (or documentary evidence if the account holder is a U.S. exempt recipient).

QUESTION 6: May a QI use a substitute Form W-8 or W-9?

ANSWER 6: A QI may use substitute Forms W-8 and W-9. See the instructions accompanying Forms W-8 and W-9 for further information about substitute forms.

QUESTION 7: May a QI use a substitute Form W-8 that is not in English?

ANSWER 7: A QI may use a substitute Form W-8 that is not in English provided that the substitute form contains an English translation.

QUESTION 8: Is an undated Form W-8 valid?

ANSWER 8: If a QI receives an otherwise properly completed Form W-8 that is undated, the QI may date the form from the day it is received and measure the validity period from that date.

QUESTION 9: May the QI add other information missing from a Form W-8?

ANSWER 9: No. If a QI receives an incomplete Form W-8 from an account holder, the QI may not complete the form on behalf of the account holder. The account holder must sign a completed form and provide it to the QI.

QUESTION 10: May a QI prepare a Form W-8BEN before presenting it to an account holder for signature?

ANSWER 10: A QI may complete Part I of Form W-8BEN with information obtained and recorded by the QI from the account holder in the ordinary course of business. For example, a QI may fill in the name and address of an account holder on a Form W-8 obtained from the QI's account opening form and then present the Form W-8 to the account holder for further completion and signature. A QI may not complete Part II for the account holder.

QUESTION 11: What type of documentary evidence may a QI obtain from its account holders?

ANSWER 11: From its direct account holders, a QI must obtain one of the types of documentary evidence listed in the applicable Attachment to its QI Agreement. From its indirect account holders, a QI must obtain documentary evidence in accordance with Treas. Reg. §1.1441-6(c) or §1.6059-5(c)(4).

QUESTION 12: For purposes of section 5 of the Attachment to the QI Agreement, what is an acceptable certification for a photocopy of documentary evidence mailed to a QI by an account holder?

ANSWER 12: The IRS will accept the forms of certification commonly used in the local country to certify the authenticity of a copy of an original document if a third party with official authority is

required to certify that the photocopy is true and correct. However, self-certifications are not acceptable even if they are the common practice in the local jurisdiction.

QUESTION 13: What procedures are necessary to properly document a pre-January 1, 2001, account for which the QI was not required to maintain originals or copies of documentary evidence under its KYC rules?

ANSWER 13: If the account file contains no documentary evidence, a notation from an employee that the employee actually examined documentary evidence is sufficient if the employee notation was made contemporaneously with the receipt of the document. After-the-fact certifications by an employee are not sufficient. If the account file does not contain documentary evidence or an employee notation, then the QI must obtain documentation from the account holder.

QUESTION 14: What type of documentary evidence must a QI obtain from an account holder claiming benefits under an income tax treaty?

ANSWER 14: From its direct account holders, a QI must obtain one of the types of documentary evidence listed in the applicable Attachment to its QI Agreement. It must also obtain a treaty statement unless the account holder is an individual, government or political subdivision thereof.

From its indirect account holders, a QI must obtain documentary evidence in accordance with Treas. Reg. §1.1441-6(c). It must also obtain a treaty statement unless the account holder is an individual, government or political subdivision thereof.

QUESTION 15: How long does documentary evidence remain valid for purposes of the QI Agreement?

ANSWER 15: Documentary evidence listed in the applicable Attachment to its QI Agreement obtained from direct account holders remains valid for as long as such documentary evidence remains valid under the applicable KYC rules, or until the QI knows or has reason to know that the information contained

in it is incorrect. Documentary evidence described in Treas. Reg. §1.1441-6(c) obtained from indirect account holders is generally valid for three years, or until the QI knows or has reason to know that the information contained in it is incorrect.

QUESTION 16: What is a treaty statement?

ANSWER 16: The treaty statement required by the QI Agreement is as follows:

[Name of account holder] meets all provisions of the treaty that are necessary to claim a reduced rate of withholding, including any limitation on benefits provisions, and derives the income within the meaning of section 894 of the Code, and the regulations thereunder, as the beneficial owner.

A QI may use a treaty statement that is not in English provided that the statement contains an English translation.

QUESTION 17: Must the account holder sign and date the treaty statement?

ANSWER 17: Yes. An account holder that is required to provide a treaty statement must sign and date the treaty statement. If the account holder providing the treaty statement has not dated it, the QI may date the treaty statement on the date the QI receives it and measure the validity period from that date.

QUESTION 18: Can a treaty statement be provided by fax or email?

ANSWER 18: An account holder cannot submit the treaty statement by fax or email.

QUESTION 19: Can a QI inform account holders of the terms of limitation on benefits provisions of a treaty by referring them to the IRS website for income tax treaties?

ANSWER 19: Yes. The IRS website address is www.irs.gov (search IRS website for Income Tax Treaties).

QUESTION 20: If documentary evidence is obtained to establish residence under an income tax treaty, when do conflicting addresses require additional documentation?

ANSWER 20: The QI Agreement provides that if a QI has a mailing or residence address for the account holder (whether or not on the documentary evidence) that is outside the applicable treaty country, or the only address the QI has (whether in or outside the applicable treaty country) is a P.O. Box, In Care Of Address, or an address at a financial institution (unless the financial institution is the beneficial owner), the QI must obtain additional documentation. For this purpose, a hold mail instruction is an address at the financial institution.

The additional documentation necessary to establish treaty residence in a jurisdiction where the account holder claims to be resident may include:

- (i) An item of documentary evidence supporting treaty residence in that jurisdiction that does not show an address outside that jurisdiction,
- (ii) A Form W-8 claiming treaty residence within that jurisdiction and showing addresses within that jurisdiction, or
- (iii) If a Form W-8 shows an address outside that jurisdiction, or if the QI has an address for the account holder (whether or not on the Form W-8) outside that jurisdiction, a written statement from the account holder that reasonably establishes treaty residence in that jurisdiction.

Thus, for example:

Ex. 1 The account holder opens an account with QI and furnishes a passport from Country X and an address in Country X.

Conclusion: Because the account holder has furnished a passport from Country X and an address in Country X, no additional documentation is required.

Ex. 2 The account holder opens an account with QI and

furnishes a passport from Country X and an address in Country Y.

Conclusion: Because the account holder has furnished a passport from Country X and an address in Country Y, additional documentation is required.

If the account holder claims treaty residence in Country X, he may furnish (i) another item of documentary evidence that does not contain an address in Country Y and supports his claim of treaty residence in Country X, or (ii) a Form W-8 with a written statement that reasonably establishes his claim of treaty residence in Country X. In either case, the QI may treat the account holder as a treaty resident of Country X.

If the account holder claims treaty residence in Country Y, he may furnish (i) another item of documentary evidence that does not contain an address in Country X and supports his claim of treaty residence in Country Y, (ii) a Form W-8 that shows addresses in Country Y, or (iii) a Form W-8 that shows addresses in Country X together with a written statement that reasonably establishes his treaty residence in Country Y. In any of those cases, the QI may treat the account holder as a treaty resident of Country Y.

Ex. 3 QI is located in Country X. The account holder opens the account in Country X and furnishes a passport from Country Y. QI has no address for the account holder. The account holder instructs the QI to hold its mail.

Conclusion: Because the hold mail instruction is considered to be the address of the QI and the only address the QI has for the account holder is that address, the QI must obtain additional documentation for this account holder.

****NOTE:** It is irrelevant whether the QI is located in the applicable treaty country because the hold mail instruction is the only address the QI has for the account holder.

Ex. 4 The QI is located in Country X, the account holder opens the account in Country X and furnishes a passport and mailing address from Country Y. The

account holder instructs the QI to hold its mail.

Conclusion: Because the hold mail instruction is not the only address the QI has for the account holder, and because the mailing address provided by the account holder is within the applicable treaty country, the QI may properly give the account holder a reduced rate of withholding under the U.S.-Country Y Income Tax Treaty.

V. FORM 1042-S REPORTING OBLIGATIONS.

QUESTION 1: What are the reporting obligations of a QI or U.S. withholding agent if, under the alternative procedure, a non-QI has provided all the required documents and information but has not supplied the allocation information?

ANSWER 1: If the non-QI fails to allocate, timely, more than 10% of the payment in a withholding rate pool to the specific recipients in the pool, the QI (or U.S. withholding agent) must file Forms 1042-S for each recipient in the pool on a pro rata basis. If however, the non-QI fails to allocate, timely, 10% or less of the payment in a withholding rate pool to the specific recipients in the pool, the QI must file Forms 1042-S for each recipient for which it has allocation information and report the unallocated portion of the payment on a Form 1042-S issued to "unknown recipient" (See Instructions to Form 1042-S, p.8).

VI. DEPOSIT REQUIREMENTS.

QUESTION 1: How can a QI that has not enrolled in the Electronic Federal Tax Payment System (EFTPS) obtain coupon books to make deposits?

ANSWER 1: The QI can obtain coupon books for making deposits by calling (215) 516-2000.

QUESTION 2: How can a QI obtain a summary from the IRS of the amounts it has deposited?

ANSWER 2: The QI can obtain a summary of amounts it has deposited by calling (215) 516-2000, selecting option 4, and requesting a summary from the IRS representative.

